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No. 03-866

IN THE SUPREME COURT OF THE UNITED STATES

DARLIE LYNN ROUTIER,
Petitioner,

v.

STATE OF TEXAS,
Respondent.

On Petition for Writ of Certiorari to the
Court of Criminal Appeals of Texas

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Did the trial court deny Routier due process under *Chessman v. Teets*, 354 U.S. 156 (1957), when it gave Routier and her appellate counsel notice of all matters regarding the problematic trial record, afforded Routier and her lawyer access to the hearings regarding the reconstruction of that record, allowed Routier and her lawyer to submit written questions for the trial court to ask witnesses at the hearings, but declined Routier's request for an evidentiary hearing once the problems in the record were addressed and corrected?

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

This case presents a most unusual situation: the reconstruction of an incomplete capital murder trial transcript by a court reporter who was not present at the trial. In June 1996, Darlie Lynn Routier, Petitioner herein, killed two of her three sons, five-year-old Damon and six-year-old Devon. In January 1997, she was tried for Damon's murder, convicted, and sentenced to death. In a published opinion released in May 2003, the Texas Court of Criminal Appeals affirmed Routier's conviction and death sentence for capital murder, specifically holding that the process by which her trial record was reconstructed complied with federal due process requirements.[1] The matter is not worthy of this Court's certiorari review.

STATEMENT OF THE CASE

I. Facts of the Crime

Routier does not challenge the sufficiency of the evidence that she is guilty of capital murder. In the pre-dawn hours of June 6, 1996, residents of the Dallas, Texas suburb of Rowlett were abruptly awakened by Darin Routier's frantic shout that "Someone

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[1] *Routier v. State*, 112 S.W.3d 554, 572 (Tex. Crim. App. 2003)

has stabbed my children! My kids and my wife!" 28 SR 220.[2] A responding police officer found Darin causing a commotion in the street, followed Darin into the Routier home, saw two small children on the family room floor with gaping stab wounds, and observed blood on the entryway and kitchen floors, as well as a broken wine glass. 29 SR 304, 307, 308-9, 327. There were also bloody tennis shoes near the front door, a bloody vacuum cleaner, bloody carpeting in the family room, bloody barefoot prints under the vacuum cleaner, more bloody barefoot prints in the kitchen, and several items of jewelry on the kitchen counter. *Id.* at 510; 33 SR 1715, 1716, 1725, 1727; 35 SR 2232-33, 2236-37. At the officer's behest, Darin went to work administering CPR on the two boys, and applying pressure to their wounds. 29 SR 311-12, 319.

Routier was in the living room, holding a towel to her neck with one hand, and a cordless phone to her ear with the other. 29 SR 307, 309. She never lifted a finger to assist her dying boys. *Id.* at 323. Instead, she told the officer that she chased the suspect, that he dropped the knife in her home, that she picked up the knife

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[2] "SR" refers to the state record of transcribed trial proceedings, preceded by volume number and followed by page number(s). "SX" refers to the numbered exhibit offered by the State and admitted at trial, followed by its designated number.

and set it on her counter, and that, in doing so, she probably messed up the suspect's fingerprints on the knife. *Id.* at 323. She described her attacker as a man "wearing a black shirt, dark pants, and a ball cap," claimed that he was hiding in her home's garage, and added that she fought with him before he "ran across the kitchen." *Id.* at 310-11, 319, 320. There were no footprints other than bare foot prints in the house, however; no shoe or boot prints were present anywhere. 35 SR 2419. The knife, now stained with blood, was one of Routier's very own, and was still on the kitchen counter when police arrived. 33 SR 1616; 34 SR 2166.

Devon had two major stab wounds to the front of his body. 28 SR 59, 60, 61. The knife slashed his left arm, and penetrated his left upper chest, the left upper lobe of his lung, his pulmonary artery, the right lower lobe of his lung, and his right posterior chest. *Id.* at 60, 65. He lay just two feet away from a stack of insurance renewal policies for the entire family. 33 SR 1736-37.

Damon had been slashed twice with the knife, and stabbed four times in the back. 28 SR 108, 123. The stab wounds penetrated two of Devon's ribs, both of his lungs, his diaphragm, and his liver. *Id.* at 111-12. He was pronounced dead upon arrival to the hospital. 30 SR 715.

The children's father had blood on his hands and shirt; their mother was also extremely bloody and also had injuries. 30 SR 564, 575. She had a five-inch-long superficial knife wound to her neck, cuts on her shoulders and fingers, and a small laceration on her right arm. 28 SR 124-25, 234; 30 SR 719, 725-27. These injuries could have been self-inflicted, however. 37 SR 3041-42. And none of the wounds appeared to be defensive wounds, or the type of cuts one would get while fending off a knife attack. 30 SR 756-59.

A search of the garage upon the arrival of backup officers produced no suspects. 29 SR 325-26. And though one of the garage's window screens was cut in a T-pattern, and folded "inward towards the garage," it was obvious that no "intruder" had entered or exited the home through that window: a solid layer of dust covered the entire length of the windowsill, as undisturbed as "new fallen snow." *Id.* at 330; 33 SR 1625, 1729, 1731, 1732; 34 SR 2176.

There was also no blood near that open window. 29 SR 476; 33 SR 1626; 34 SR 2171. Nor was there any in the backyard. 34 SR 2182-93. Nor was there any in the alley adjacent to the house. 32 SR 1265-66, 1268, 1270, 1276; 33 SR 1813. In fact,

there was no evidence anywhere in or around the crime scene to confirm Routier's story that an intruder broke into her home and killed those two boys. 34 SR 2182-93; 35 SR 2416-21; 45 SR 5081-82. A search of the neighborhood produced only one slightly soiled white athletic sock two houses away. 29 SR 356; 32 SR 1255, 1257-64, 1269-70.

Meanwhile, Routier, Damon, and Devon were taken to the hospital. The first thing a nurse heard Routier say when she was admitted, was "I need pain medication." 31 SR 894. In response to a doctor's inquiries regarding the cause of her injuries, Routier replied that she had been stabbed by a white male in a baseball cap who "she only saw him from the back." 31 SR 851-52. Though Routier also asked hospital personnel, "Why did they kill my boys? Why did they kill my boys? Why would he kill my boys? Why would he kill my boys?" and "How could anyone do this to my children?" she was not at all hysterical about the death of her two sons; she did not cry much. 30 SR 719-26, 746, 747, 749; 31 SR 864-65, 895, 915, 1043-44, 1156. According to her treating physician, she "had a sort of a flat affect." 30 SR 747. And when her surviving infant son was brought in to visit her, she turned her head away from him. 31 SR 1032-33.

There was also evidence that Routier somehow managed to get a large bruise on her right arm while she was hospitalized for the neck injury. 30 SR 764-78; 31 SR 867-69, 1037-40, 1099-1101.

Throughout her hospital stay, Routier also worried aloud about the fact that her fingerprints were on the knife: she told practically everyone that "she had picked up the knife after the attacker dropped it." 31 SR 982, 1029, 1098-94; 32 SR 1206. Routier also mentioned to hospital personnel that a suspicious car had passed by her house before the murders and "appeared to be . . . watching the house." 31 SR 1097.

Homicide detectives questioned Routier at the hospital. 31 SR 919-22. According to the attending nurse who observed the interview, Routier cried a little but did not otherwise display a lot of emotion as she explained to the investigators that she was injured when she tried to fend of her attacker with her hands, that the attacker ran into her garage and dropped the knife, and that she picked up the knife and ran after him. *Id.* at 922, 932-33, 982. A window in the garage was open, Routier added, because the family cat was in heat and stayed in the garage. *Id.* at 985. Routier described the attacker as a tall white man with shoulder-length

dark hair, who wore a dark baseball cap, dark T-shirt, and jeans. *Id.* at 923-24, 982. She also went into substantial detail about the type of jewelry that was in plain view on the kitchen counter, but which was untouched by the attacker. *Id.* at 927.

At times, Routier's account of what happened was inconsistent. For instance, she told the officers that she, Devon, and Damon were asleep in the living room when she awoke with a man on top of her. 31 SR 982. To the hospital's trauma coordinator, however, Routier said that her son Damon woke her up that night, shaking her and saying, "Mommie" or "Mama," and that both he and she were already stabbed when she awoke. 31 SR 1030. And to one of the nurses, Routier said that she awoke to the cries of one of her boys. 32 SR 1205. The trauma coordinator also testified that Routier stated that she then got up to go to the kitchen, that Damon followed her, and she told him to lay down. *Id.* at 1030.

The evidence at the scene also conflicted with Routier's story that she fended off her attacker with her hands, that the intruder dropped the murder weapon, and that the intruder ran from the family room, through the kitchen, and into the garage. In addition to the lack of any evidence that someone broke into her

house the night of June 6, 1996, there was no evidence of a struggle in the family room. 35 SR 2399. There was no blood spatter evidence that a bloody knife fell anywhere in the Routier home. 35 SR 2276. The blood spatter evidence at the scene also refuted Routier's account that she chased her attacker after he stabbed her. *Id.* at 2280. There was some indication, however, that someone had attempted to rinse blood or wash off blood in the kitchen sink. 35 SR 2706-11; 37 SR 2794-96.

There was evidence that the family was in dire financial straits at the time, as well. Only five days before the murders, on June 1, 1996, Darin's bank declined his request for a loan in the amount of five thousand dollars. 34 SR 2111, 2116. Darin resubmitted the loan request with collateral on June 3, but that, too, was denied. *Id.* at 2117. In May 1996, he was two months behind on his mortgage payments and was notified by his mortgage company that his home was in danger of being foreclosed. SX 83B.

On Friday, June 14, 1996, Darlie went to the cemetery where her sons were buried, and celebrated Devon's birthday. 36 SR 2565-67. Four days later, she was *Mirandized*, arrested, and questioned for about three hours. 45 SR 5055, 5056-64. In

response to the interrogating officer's repeated suggestion that she was the killer, Routier unfailingly stated, "If I did it, I don't remember." 45 SR 5063-64. She never outright denied killing them, and on one occasion, "she just didn't respond at all, she just shrugged her shoulders." *Id.* at 5064.

II. The Reconstructed Trial Record

In October 1998, appellate counsel discovered inaccuracies in the transcribed trial testimony, and alerted the Texas Court of Criminal Appeals. *Routier*, 112 S.W.3d at 557. That court ordered the court reporter to prepare a supplemental record with corrections, and further ordered the trial court to "ensure that the reporter's record conformed to what occurred at trial." *Id.* at 557-58.

Following several hearings in the trial court, additional problems were found in the record, and a new court reporter was assigned to fix them based on the original court reporter's "notes, disks, and tapes from the trial." *Id.* at 558-63. The parties (and experts retained by the trial court) agreed that the new court reporter—who at that time worked for a federal district judge—was qualified and competent to review and correct the record. *Id.* at 559. In all, the trial court held no less than seven

hearings regarding the poorly-prepared original record. *Id.* at 558-62. The trial court ordered Routier to file written objections and a request for a hearing after the new court reporter completed her work. Routier filed her objections and a request for a hearing, and the State responded, noting that Routier had identified no inaccuracies between the corrected record and the events at trial and no factual disputes that could not be resolved on the existing record. *Id.* at 562-63, 573-74. At last, in 2000, satisfied with the new court reporter's corrections to the record, the trial court issued findings on the reconstructed record and denied Routier's request for an evidentiary hearing. *Id.* at 563.

Citing to *Chessman v. Teets*, 354 U.S. 156 (1957), Routier appealed, arguing, among other things, that the trial court's proceedings regarding the record's reconstruction "did not comply with the requirements of federal due process." *Id.* at 572. The Court of Criminal Appeals overruled that point of error, finding *Chessman* distinguishable from Routier's situation because, unlike the petitioner in *Chessman*, "[Routier] and her counsel had notice of the proceedings, were present during the extensive proceedings on the certification of the [new] record, and were given ample opportunity to make objections to [that] record." *Id.* at 572.

ARGUMENT

I. The Question Presented for Review Is Unworthy of the Court's Attention.

Rule 10 of the Rules of the Supreme Court provides that certiorari review is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. Routier advances no special or important reason in this case, and none exists. Accordingly, her petition presents no important question of law to justify this Court's exercise of its certiorari jurisdiction, and should be denied.

II. The Process By Which Routier's Trial Record Was Reconstructed Was Constitutional and Did Not Deprive Routier of Due Process.

There is no question that the trial judge afforded Routier all the procedural due process she was entitled to during the post-trial transcript-reconstruction process. Routier was represented by counsel at the several hearings the trial court conducted for that purpose, both she and the prosecution were allowed to submit written questions for the trial court to ask the pertinent witness—the new court reporter, and both were allowed to submit written objections to the questions the trial court asked of that court reporter. *See Routier*, 112 S.W.3d at 559, 562, 572. *Cf.*

Chessman, 354 U.S. 156.

As the state appellate court correctly concluded, *Chessman* fails to dictate the result Routier seeks. *See Routier*, 112 S.W. at 572; *Chessman*, 354 U.S. at 162 (holding that a defendant has a due process right to be represented at transcript-reconstruction hearings either in person or through counsel). In *Chessman*, the petitioner, Caryl Chessman, had insisted on representing himself at his May 1948 capital murder trial. *Chessman*, 354 U.S. at 158. About a month after the trial, the court reporter who made notes during the trial died before he was able to finish transcribing them. *Id.* Chessman requested a new trial, and was denied; thereafter, a second court reporter was assigned the duty of constructing a completed record from the notes. *Id.* at 159. In February 1949, the new court reporter submitted a rough draft of the completed transcript to the trial judge for review. *Id.* Chessman, however, was not given a copy of that draft until it was filed in final form with the trial court five months later. *Id.* And after he reviewed it, he sent the trial court a list of two hundred corrections, asked for a hearing, and notified the court that he had not had an opportunity to contact legal counsel regarding the significance of the errors. *Id.* at 160. The trial court denied Chessman's motion, and allowed

"the matter [to continue] to proceed on an ex parte basis to final conclusion." *Id.* at 160. Four more hearings were held; and though Chessman was invited to none of them, the trial court incorporated eighty of his two hundred corrections into the record. *Id.* at 160, 161. On certiorari review, this Court held that Chessman had a due process right to participate in the proceedings either in person or by counsel. *Id.* at 162.

By contrast, as described above, neither Routier nor her attorneys were excluded from the proceedings the trial court held to reconstruct an accurate trial transcript. *See Routier*, 112 S.W.3d at 557-563. And, as the Court of Criminal Appeals recognized in its published direct appeal opinion, Routier was afforded ample opportunity to be heard. *Id.*

Though she complains that the trial court failed to notify her "that the several appearances of [the new court reporter] were the only opportunities [she] would have to present evidence challenging the reconstructed record," Petition at 13, this Court has never held that such "notice" is constitutionally required in such a proceeding. Nor has this Court ever held that a petitioner such as Routier is entitled to an evidentiary hearing on a transcript reconstruction matter when the petitioner or her attorney had

already participated in seven previous hearings in that same matter. *See* Petition at 14-15 (asserting that the trial court denied Routier due process when it refused to allow her to call witnesses at an evidentiary hearing). Regardless, as the court below correctly observed, "[Routier] had ample notice and opportunity to present live witnesses regarding her objections to the [new court reporter's] record." *Routier*, 112 S.W.3d at 574.

> [Routier] had three opportunities to put on witnesses and ask questions about the [original] record. Although her counsel was not permitted to ask questions of [the new court reporter] directly, counsel for both [Routier] and the State were permitted to submit questions to [the trial court, which] read them to [the new court reporter]. [Routier] was given an opportunity to submit more questions after a break in the proceedings and again several days after the hearings. [The new court reporter] prepared the record in stages. . . .
>
> Routier had over six months to review the first installment of the [new court reporter's] record and to have another expert review it for problems. When the second installment was delivered, [Routier] had another opportunity to submit questions to be answered by [the new court reporter]. Then [Routier] had another three months to review the portions of the record already received before the final installment of the record was received.
>
> After all the corrected volumes had been received, [Routier] submitted her written objections to the trial court, including a request for another hearing. The State

> responded to the request by stating that there were no factual disputes needing to be resolved. The trial court set a hearing date but later cancelled it, finding that further proceedings were outside the scope of [the appellate court's] orders. [Routier] still showed no factual disputes that required an additional hearing to be resolved.

Routier, 112 S.W.2d at 573-74. The process Routier received, including, obviously, notice of the seven transcript-reconstruction hearings, an opportunity to submit written questions to witnesses, and the opportunity to object to the corrected record comports with the dictates of due process.

CONCLUSION

For the foregoing reasons, this Court should deny Routier's petition for a writ of certiorari.

Respectfully submitted,

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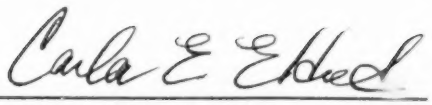

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